AMAX SPECIALTY METALS CORP.

IBLA 86-22 Decided November 24, 1987

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio and rescinding in part a Mineral Entry Final Certificate. UMC 71306 and UMC 71307.

Reversed and remanded.

1. Mineral Lands: Mineral Reservation -- Mining Claims: Lands Subject to -- Patents of Public Lands: Reservations

As provided by 43 CFR 3811.2-9, lands patented with mineral reservations to the United States under the Taylor Grazing Act, 43 U.S.C. § 315g (1970), are subject to appropriation under the mining or mineral leasing laws for the reserved minerals.

APPEARANCES: H. Byron Mock, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Amax Specialty Metals Corp. has appealed from a September 6, 1985, decision of the Utah State Office, Bureau of Land Management (BLM), declaring placer mining claims NL No. 10-42 (UMC 71306) and NL No. 10-43 (UMC 71307) null and void ab initio. These two claims had been included by appellant in an application for patent filed April 18, 1983, for which BLM issued a Mineral Entry Final Certificate on March 8, 1984. Accordingly, the September 6, 1985, decision also rescinded the Final Certificate in part to exclude the two claims. The claims were originally located on March 19, 1970, by appellant's predecessor-in-interest and are situated in the NE 1/4 NE 1/4 sec. 10, T. 2 N., R. 8 W., Salt Lake Meridian, Tooele County, Utah.

In finding the claims null and void, BLM explained:

> The mining claims are located on lands patented to the State of Utah in Patent No. 43-69-0013 dated October 22, 1968. While the mineral estate is reserved to the United States, there are no regulations providing for location under the mining laws for these lands.

> Mining claim locations for lands in which the surface title has passed from the United States, may only be made after regulations providing for such locations have been promulgated. (George Schultz et al., 81 IBLA 29, May 17, 1984). Accordingly, the mining claims, NL Nos. 10-42 and 10-43, are hereby declared null and void ab initio in their entirety.

Appellant argues that the holding in the case relied upon by BLM, George Schultz, supra, is inapplicable to the mining claims at issue in this appeal. We agree.

The Board in Schultz held that lands patented under the Recreation and Public Purposes (R&PP) Act of 1926, as amended, 43 U.S.C. §§ 869 through 869-4 (1982), were not open to mineral entry. The R&PP Act makes minerals reserved under its provisions subject to disposition only under applicable laws and "such regulations as the Secretary may prescribe." Because no such regulations had been issued to regulate mineral entry on lands patented under the R&PP Act, the Board found that "the Secretary has in effect, prescribed that there shall be no prospecting for or disposition of the reserved deposits at this time." 81 IBLA at 37.

The patent for the lands on which the mining claims at issue were located, Patent No. 43-69-0013, was issued pursuant to the land exchange provision (section 8) of the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315g (1964), repealed by section 705(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792. In compliance with the requirements of this provision, the patent was issued with a reservation of all minerals to the United States.

Appellant argues that unlike the R&PP Act, the Taylor Grazing Act has no requirement that minerals reserved under its provisions are available for development only after promulgation of regulations. That is true; however, there is a regulation which is applicable in this case. Under 43 CFR 3811.2-9, lands patented under the Taylor Grazing Act "are subject to appropriation under the mining or mineral leasing laws." 1/ Edward Lore, 97 IBLA 340 (1987). BLM erred in declaring appellant's claims null and void. It necessarily follows that it was also error partially to rescind the Final Certificate to eliminate these claims.

1/ It is not surprising that BLM failed to acknowledge the regulation or that appellant did not cite it on appeal. Found within 43 CFR Part 3810, "Lands and Minerals Subject to Location," 43 CFR 3811.2-9 is captioned under: "Lands under Color of Title Act." The use of this title, while not diminishing the regulation's applicability, obfuscates the full import of 43 CFR 3811.2-9.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case is remanded to BLM with instructions to restore placer mining claims NL No. 10-42 and NL No. 10-43 to the Mineral Entry Final Certificate referred to above.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Kathryn A. Lynn
Administrative Judge, Alternate Member.